

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

REECE ALBERT, INC., UNITED
STATES OF AMERICA FOR THE USE
AND BENEFIT OF REECE ALBERT,
INC.;

Plaintiff,

VS.

MILCON CONSTRUCTION, LLC,
DEVELOPERS SURETY AND
INDEMNITY COMPANY,

Defendants.

SA-20-CV-00235-DAE

ORDER

Before the Court in the above-styled cause of action is the Unopposed Motion to Withdraw as Counsel [#19], filed by John C. Dulske. Mr. Dulske is currently counsel of record for Defendant Milcon Construction, LLC (“Milcon”), and Defendant Developers Surety and Indemnity Company (“Developers”). Mr. Dulske was formerly employed by the law firm of Dykema Gossett PLLC but as of August 1, 2022, has accepted employment with the law firm of Steptoe & Johnson, PLLC. According to Mr. Dulske, Developers has tendered its defense to Milcon and Milcon has agreed to pay for the defense. Mr. Dulske wishes to withdraw his representation of Defendants because Milcon has failed to meet its financial obligations, making continued representation unreasonable and financially burdensome to Mr. Dulske. Developers has a successor attorney: Robert M. Fitzgerald. Milcon has not yet found substitute counsel.¹

¹ The record reflects that Christopher Gerald Burwell is also counsel of record for Milcon and Developers. Via an advisory filed on August 30, 2022, Mr. Dulske clarified that Mr. Burwell intended to terminate his representation upon the notice of appearance by Mr. Dulske on

After reviewing the motion, the Court directed Mr. Dulske to serve Milcon with a letter explaining his intent to withdraw and advising Milcon that a failure to find substitute counsel could subject it to the possibility of a default judgment, as limited liability companies are unable to represent themselves *pro se* in federal court. *See Memon v. Allied Domecq QSR*, 385 F.3d 871, 873 (5th Cir. 2004); *Lattanzio v. COMTA*, 481 F.3d 137, 140 (2d Cir. 2007). The Court is in receipt of the advisories filed by Mr. Dulske on August 30, 2022, which demonstrate that Mr. Dulske has complied with the Court's order by sending correspondence to Milcon's sole member and manager, Rocky Aranda, including a copy of his motion to withdraw and the Court's Order dated August 29, 2022. Mr. Dulske's Supplemental Advisory indicates that he received read receipts in response to the emailed correspondence, confirming Mr. Aranda received the information regarding his intent to withdraw.

The Court will now grant Mr. Dulske's motion to withdraw. The Court again finds that Mr. Dulske has a valid basis to withdraw his representation and has provided the Court with an adequate explanation for his inability to obtain Mr. Aranda's signature for his motion to withdraw. Mr. Dulske has therefore complied with Local Rule AT-3. The Court further finds that Milcon has been informed of Mr. Dulske's intent to withdraw and the risks of proceeding without substitute counsel.

IT IS THEREFORE ORDERED that the Unopposed Motion to Withdraw as Counsel [#19], filed by John C. Dulske, is **GRANTED**.

IT IS FURTHER ORDERED that Mr. Dulske is hereby **WITHDRAWN** as counsel for Defendants Milcon Construction, LLC, and Developers Surety and Indemnity Company.

May 24, 2022 [#16]. Mr. Burwell has been terminated as attorney of record for Milcon and Developers as of May 24, 2022.

IT IS FURTHER ORDERED that the Court transmit a copy of this Order to Defendant Milcon Construction, LLC, at the following address, which is to be used for all future filings until further notice:

Milcon Construction, LLC
Attn: Armando A. Aranda, Jr.
225 East Locust Street
San Antonio, Texas 78212
(210) 225-9400
(210) 705-3375 (cell)
Email: rocky@milconco.com

IT IS FINALLY ORDERED that on or before **September 23, 2022**, Defendant Milcon Construction, LLC shall **FILE AN ADVISORY** with the Court indicating whether it has obtained substitute counsel. Defendant is admonished that as an LLC, it may not proceed *pro se* in federal court, and failure to obtain substitute counsel could result in a default judgment being entered against the Company.

SIGNED this 2nd day of September, 2022.



ELIZABETH S. ("BETSY") CHESTNEY
UNITED STATES MAGISTRATE JUDGE